

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

MERVYN A. PHELAN, SR.

Defendant

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* **CRIMINAL NO. JKB-12-0103**
* **CIVIL NO. JKB-16-0288**

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MEMORANDUM AND ORDER

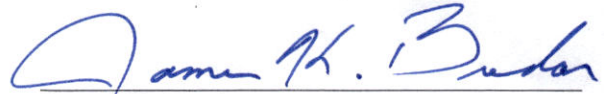
Previously the Defendant filed a petition seeking relief pursuant to 28 U.S.C. § 2255 (ECF No. 285). The Government opposed that petition (ECF No. 337) and the Court ruled in the Government's favor (ECF No. 346). However, as the Court of Appeals noted before dismissing and remanding the case before it, the Judge then presiding in this case did not formally address the second of the Defendant's two grounds seeking vacatur of his conviction. In addition to alleging ineffective assistance of counsel, the Defendant also contended that he was the victim of such egregious prosecutorial misconduct as to warrant vacation of his conviction.

This case having been recently reassigned to a different judge, the Court has undertaken a review of all that has proceeded previously. The Court has carefully reviewed the Defendant's most recent submission (ECF No. 380) as well as his other allegations and contentions that there was prosecutorial misconduct. The Court is not persuaded. For the reasons set out in the Government's FURTHER OPPOSITION (ECF No. 379), the second ground on which the § 2255 petition is brought is now expressly DENIED. The Defendant has failed to carry his burden. The Court adopts the Government's reasoning as its own.

A certificate of appealability may issue only if the defendant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). *See also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In order to satisfy § 2253(c), a defendant must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (citing *Slack*, 529 U.S. at 484). Defendant has failed to meet the standard for a certificate of appealability. Therefore, it too is DENIED.

DATED this 11 day of September, 2018.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "James K. Breder", written over a horizontal line.

James K. Breder
Chief Judge